



**FEDERAL ELECTION COMMISSION**  
Washington, DC 20463

**MAY 10 2016**

Stephen M. Ryan  
McDermott Will & Emery LLP  
500 N. Capitol Street N.W.  
Washington, DC 20001

RE: MUR 7052  
Freedom Fund and Lance Kolbet  
in his official capacity as treasurer

Dear Mr. Ryan:

On October 6, 2015, your clients, Freedom Fund and Lance Kolbet in his official capacity as treasurer ("the Committee"), notified the Federal Election Commission ("Commission") *sua sponte* that they may have violated certain provisions of the Federal Election Campaign Act of 1971, as amended ("Act"). On April 26, 2016, the Commission determined to open a matter under review and found reason to believe that the Committee violated 52 U.S.C. §§ 30102(c), 30104(b), 30116(f). The Factual and Legal Analysis that sets forth the basis for the Commission's determination is enclosed.

We have also enclosed a brief description of the Commission's procedures for handling possible violations of the Act. In addition, please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519. This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and § 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. Please be advised that although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.<sup>1</sup>

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to your clients as a way to resolve this matter at an early stage, and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that your clients violated the law.

<sup>1</sup> The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

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If you are interested in engaging in pre-probable cause conciliation, please contact Saurav Ghosh, the attorney assigned to this matter, at (202) 694-1650 or (800) 424-9530, within seven days of receiving this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. See 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if you are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

We look forward to your response.

On behalf of the Commission,



Matthew S. Petersen  
Chair

Enclosures  
Factual and Legal Analysis

1                                   **FEDERAL ELECTION COMMISSION**

2                                   **FACTUAL AND LEGAL ANALYSIS**

3   RESPONDENTS:   Freedom Fund and Lance Kolbet                                   MUR 7052  
4                                   in his official capacity as treasurer  
5

6   **I.   GENERATION OF MATTER**

7           This matter was generated based on information ascertained by the Federal Election  
8   Commission ("Commission") in the normal course of carrying out its supervisory  
9   responsibilities, *see* 52 U.S.C. § 30109(a)(2). Freedom Fund and Lance Kolbet in his official  
10   capacity as treasurer ("Freedom Fund") filed a *sua sponte* submission on October 6, 2015,  
11   disclosing the receipt of unreported in-kind contributions in the form of unreimbursed event  
12   expense payments.<sup>1</sup> Those payments were made by Thomas O'Gara, who as far back as 1998  
13   hosted, and paid most of the expenses for, an event known as the "Hook & Bullet" at his home in  
14   Idaho. In recent years, that event served at least partly as a political fundraiser for Freedom  
15   Fund. O'Gara subsequently joined the *sua sponte* submission.

16           Based on the available information, the Commission has determined to open a matter  
17   under review ("MUR") and find reason to believe that Freedom Fund violated 52 U.S.C.  
18   §§ 30102(c), 30104(b), 30116(f) by knowingly accepting excessive in-kind contributions, failing  
19   to keep required records relating to those contributions, and failing to disclose those  
20   contributions in its disclosure reports filed with the Commission.

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<sup>1</sup>       Freedom Fund is the leadership political action committee of U.S. Senator Michael Crapo (Idaho). *See Sua Sponte* Submission (Oct. 6, 2015) ("Submission") and Supplemental Letter from Stephen Ryan, McDermott Will & Emery LLP, Counsel for Respondents (Dec. 14, 2015) ("Supplemental Letter").

1 **II. FACTUAL AND LEGAL ANALYSIS**

2 **A. Factual Background**

3 **1. O’Gara’s Unreimbursed Payments for Fundraising Event Expenses**

4 Beginning in 1998, O’Gara hosted an annual event, later called the Hook & Bullet, every  
5 summer at his home in Idaho.<sup>2</sup> The event was originally an informal barbecue for O’Gara’s  
6 family and friends, including Senator Crapo. The attendees in the event’s early years made no  
7 contributions to Crapo’s committees, and attended as O’Gara’s personal guests. O’Gara  
8 apparently paid all expenses related to the event when it was a purely social gathering.<sup>3</sup> From its  
9 inception, the event featured food and drink, and as it grew in size and scope, it featured a variety  
10 of outdoor activities and other entertainment, including fishing, trap and skeet shooting,  
11 horseback riding, and a live local band.<sup>4</sup>

12 At some point in the early 2000s, the Hook & Bullet also became a fundraising event for  
13 political committees linked to Crapo.<sup>5</sup> The Respondents characterize the Hook & Bullet as  
14 “somewhat of a hybrid” community gathering and fundraising event, in that the attendees were a  
15 mixture of O’Gara’s personal guests and political supporters of Crapo and the Crapo-linked  
16 committees.<sup>6</sup> While Crapo’s political committees were not originally involved in planning or  
17 paying for the event, the committees became involved as the event became a fundraiser. The

2 See Supp. Letter at 4.

3 *Id.*

4 *Id.* at 5; see Submission at 1.

5 The Respondents do not state specifically when this transition occurred: “Upon information and belief, we believe this occurred in the early 2000’s.” Supp. Letter at 5 n.2.

6 *Id.* at 5.

1 2011 and 2012 events benefited Freedom Fund.<sup>7</sup> In those years, Freedom Fund paid for the  
2 shooting expenses, but O’Gara paid for all other expenses, including the party rentals, band,  
3 horse rentals, and catering costs.<sup>8</sup> Through poor oversight, and because Freedom Fund  
4 apparently did not receive timely invoices documenting O’Gara’s payments, it did not reimburse  
5 O’Gara for these event expenses. It also never reported these payments as in-kind contributions  
6 by O’Gara in its disclosure reports filed with the Commission.<sup>9</sup> The table below provides a  
7 summary of the unreimbursed event expenses paid for by O’Gara.<sup>10</sup>

| Event                            | Expense                      | Amount                 |
|----------------------------------|------------------------------|------------------------|
| 2011 H&B Event<br>(Freedom Fund) | Kim Stocking Band            | \$1,000.00             |
|                                  | Barbara’s Party Rentals      | \$1,814.00             |
|                                  | Tyler Petersen Horse Rentals | \$2,200.00             |
|                                  | Full Moon Catering           | \$13,664.60            |
|                                  | <b>2011 TOTAL</b>            | <b>\$18,678.60</b>     |
| 2012 H&B Event<br>(Freedom Fund) | Kim Stocking Band            | \$300.00 <sup>11</sup> |
|                                  | Barbara’s Party Rentals      | \$1,904.55             |
|                                  | Tyler Petersen Horse Rentals | \$2,400.00             |
|                                  | Full Moon Catering           | \$19,324.22            |
|                                  | <b>2012 TOTAL</b>            | <b>\$23,928.77</b>     |
| 2011–2012 H&B Events             | <b>GRAND TOTAL</b>           | <b>\$42,607.37</b>     |

<sup>7</sup> See Submission at 1.

<sup>8</sup> See *id.* at 2.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 2–3.

<sup>11</sup> The *sua sponte* submission indicated that in 2012, O’Gara paid \$1,000 to the band. However, according to Respondents’ supplemental informational letter, invoices showed that the band cost \$1,500 in 2012 but that amount was included in the catering total. O’Gara paid the band a separate, additional fee of \$300, not the \$1,000 that was disclosed in the *sua sponte* submission. By that point, however, Freedom Fund had already reimbursed O’Gara \$24,628.77 for 2012, based on the \$1,000 estimate of the band payment, when it actually owed O’Gara only \$23,928.77 for that year’s event, based on the actual payment of \$300 for the band. In other words, Freedom Fund paid O’Gara \$700 more than he spent on the 2012 event expenses.

1 The *sua sponte* submission and the supplemental letter include documentation supporting  
2 these figures.

3 2. Discovery and Disclosure of the In-Kind Contributions

4 In December 2010, the committees filed an unrelated *sua sponte* submission — and,  
5 realizing that their oversight regime contained serious flaws, they implemented additional  
6 recordkeeping and compliance policies.<sup>12</sup> Susan Wheeler, who became the Washington, D.C.,  
7 Chief of Staff for Senator Crapo in 2011, found that although the committees were spending  
8 significant amounts on the Hook & Bullet event, they did not have documentation for certain  
9 expenses, including horse rentals, catering, music, and party rentals.<sup>13</sup> Wheeler then began an  
10 inquiry, which included research by outside counsel, the committee's fundraising firm, and  
11 O'Gara's personal accountant.<sup>14</sup> The inquiry revealed that O'Gara had paid certain event  
12 expenses and had not been reimbursed by Freedom Fund, resulting in unreported in-kind  
13 contributions by O'Gara to the committees.<sup>15</sup>

<sup>12</sup> See *Sua Sponte* Submission at 2 (Apr. 29, 2013), Pre-MUR 556 / ADR 725 (Mike Crapo for U.S. Senate, *et al.*) (explaining that Jacob G. Ball, Crapo's former campaign manager, departed the Campaign in December 2010 and informed the committee of the apparent fraud, prompting the committee to retain outside counsel to investigate). The oversight policies that the committees implemented after discovering the unreported loan include requiring express authorization by at least two senior campaign staff members before making any disbursement from committee accounts, having at least one committee staff member without disbursement authority review bank statements and monitor financial transactions, and reconciling bank statements with accounting files and campaign finance disclosure reports weekly or monthly. The committees note that these policies "highlighted inadequacies" in recordkeeping and reporting that prompted them to track down the missing O'Gara invoices. Supp. Letter at 2–3.

<sup>13</sup> See Supp. Letter at 2.

<sup>14</sup> See Submission at 2–3; Supp. Letter at 2–3.

<sup>15</sup> See Submission at 2–3.

1                   3. Remedial Steps

2           After the committees concluded their inquiry, Freedom Fund reimbursed O’Gara for  
3   expenses relating to the 2011 and 2012 events.<sup>16</sup> Furthermore, the committee sought to prevent  
4   future similar violations by implementing new policies for fundraising events: its staff and  
5   outside fundraising personnel now engage directly with vendors for the Hook & Bullet, rather  
6   than allowing O’Gara to pay for expenses and later be reimbursed.<sup>17</sup> Respondents subsequently  
7   amended the appropriate disclosure reports.

8           B.     Legal Analysis

9           Under the Federal Election Campaign Act of 1971, as amended (“Act”), a contribution  
10   includes “any gift, subscription, loan, advance, or deposit of money or anything of value made  
11   by any person for the purpose of influencing any election for Federal office.”<sup>18</sup> “Anything of  
12   value” includes all in-kind contributions, such as “the provision of any goods or services without  
13   charge or at a charge that is less than the usual and normal charge for such goods or services.”<sup>19</sup>  
14   At the relevant times, the Act prohibited any person from making aggregate contributions to a

<sup>16</sup> Freedom Fund paid O’Gara \$18,678.60 for the 2011 event expenses and \$24,628.77 for the 2012 event expenses. Submission at 4. As noted above, however, in their supplemental letter the Respondents point out that O’Gara was actually over-reimbursed \$700 for the 2012 event, *see supra* note 12.

<sup>17</sup> Respondents claim that although the event was supposed to be held at O’Gara’s Idaho ranch in August 2013, Freedom Fund cancelled the event due to widespread forest fires in Idaho. *See* Submission at 4 n.4. They also indicated in an e-mail from counsel that O’Gara did not spend any funds in connection with the cancelled 2013 Hook & Bullet event, and that Freedom Fund hosted, and paid for, a substitute fundraising event at the Greenbriar Resort in White Sulphur Springs, West Virginia; Freedom Fund reported expenditures of \$38,363.77 related to that event on its 2013 Year-End Report. *See* Freedom Fund 2013 Year-End Report at 69 (Jan. 31, 2014). Respondents note that the Hook & Bullet event was held again in 2014 and 2015, benefiting Freedom Fund both years, and that Freedom Fund paid for all event-related expenses directly and reported those expenditures to the Commission. They also claim that since 2010, no other fundraising event has raised compliance issues. *See* Submission at 4.

<sup>18</sup> 52 U.S.C. § 30101(8)(A)(i). The Act’s definition of contribution also encompasses the “payment by any person of compensation for the personal services of another person which are rendered to a political committee without charge for any purpose.” *Id.* at § 30101(8)(A)(ii).

<sup>19</sup> 11 C.F.R. § 100.52(d)(1).

1 candidate for federal office, or a candidate's authorized committee, in excess of \$2,400 per  
2 election, and prohibited any person from making aggregate contributions to any other political  
3 committee in excess of \$5,000 per calendar year.<sup>20</sup> Similarly, the Act prohibits political  
4 committees from knowingly accepting excessive contributions.<sup>21</sup> The Act requires that  
5 committees file periodic disclosure reports with the Commission disclosing all contributions, in-  
6 kind or otherwise, that they receive.<sup>22</sup> The Act also requires the treasurer of a political  
7 committee to keep records of all contributions received by or on behalf of the committee, along  
8 with information identifying any person who makes a contribution in excess of \$50 or aggregate  
9 annual contributions of more than \$200.<sup>23</sup>

10 The record here indicates that O'Gara made in-kind contributions by paying for event-  
11 related expenses, in excess of the relevant contribution limits, that benefited Freedom Fund, for  
12 which Freedom Fund did not reimburse him. Moreover, by failing to timely reimburse O'Gara,  
13 Freedom Fund knowingly accepted those excessive in-kind contributions. When Freedom Fund  
14 failed to report the O'Gara expense payments as in-kind contributions, and keep required records  
15 relating to those contributions, it violated the Act's reporting and recordkeeping requirements.

16 The Commission finds reason to believe that Freedom Fund violated 52 U.S.C.  
17 §§ 30102(c), 30104(b), 30116(f) by knowingly accepting excessive in-kind contributions in  
18 connection with the 2011 and 2012 Hook & Bullet events, failing to keep required records

<sup>20</sup> 52 U.S.C. § 30116(a)(1)(A), (C); *see* 11 C.F.R. § 110.1(b). The limit for individual contributions to any other political committee in 2011 and 2012 was \$5,000 per calendar year. *See* Contribution Limits for 2011-2012, <http://www.fec.gov/info/contriblimits1112.pdf>.

<sup>21</sup> 52 U.S.C. § 30116(f).

<sup>22</sup> 52 U.S.C. § 30104(a), (b); *see* 11 C.F.R. § 104.3(a).

<sup>23</sup> 52 U.S.C. § 30102(c); *see* 11 C.F.R. § 102.9(a).

- 1 relating to those in-kind contributions, and failing to disclose those in-kind contributions in its
- 2 disclosure reports filed with the Commission.

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